

Man not spared DUI conviction by medical marijuana use law

POSTED: 08:04 PM Friday, April 27, 2012



Michigan's medical marijuana laws can't protect a registered user from being charged with driving under the influence of a Schedule 1 narcotic, the Michigan Court of Appeals said.

In *People v. Koon* (Lawyers Weekly No. 07-78220, 5 pages), the court reasoned that the legality of the defendant's marijuana use was not under attack in the case, inasmuch as his driving with active THC in his bloodstream, Grand Traverse Assistant Prosecutor Jennifer

Tang-Anderson said.

In essence, she said, the court treated it like any driving-while-under-the-influence-of-alcohol case.

The defendant, Rodney Koon, was charged under MCL 257. 625(8), which prohibits driving with any level of a Schedule 1 narcotic in his blood system. Marijuana is a Schedule 1 narcotic.

Tang-Anderson said the "zero tolerance" policy only covers "active THC" found in a blood sample collected under a warrant following a traffic stop. In order to be legal to drive, a person must have an active THC level of zero.

Tang-Anderson said the Michigan Attorney General and the defense produced information from studies that show that active THC can remain in the blood stream for a few hours after using marijuana.

"Most defendants don't say that they just finished smoking a joint, but usually after the case is over, they'll say it was just before they were pulled over," she said. "This is not something you smoked it at night for your pain, then got up in the morning. It won't be there as active."

People found with metabolites such as 11-carboxy-THC used to be charged under the statute until the Michigan Supreme Court ended the practice in 2010's *People v. Feezel* (Lawyers Weekly No. 06-73331, 45 pages) decision.

"Some people say it will stay in your system for two weeks, but that's not true," Tang-Anderson said. "If anything, that would be the metabolite."

Koon argued his marijuana use was legal under the Michigan Medical Marihuana Act, thus, it wasn't illegal for him to have THC in his system.

The zero tolerance policy for Schedule 1 narcotics comes from the idea that such drugs have no medicinal value, whereas Schedule 2 narcotics such as hydrocodone have medicinal value. The difference between the two, criminally, is that the prosecution would have to show the driver was impaired by a Schedule 2 narcotic in order to get a conviction, Tang-Anderson said.

Even though Koon was using marijuana legally for medicinal purposes, it's still considered Schedule 1 under both Michigan and federal law.

Koon's attorney, Jim Hunt of Traverse City, didn't respond to a message seeking comment.

Southfield criminal defense attorney Michael Komorn disagreed with the decision, saying that it would be different if the law required the state to show the defendant was impaired by marijuana use like it does Schedule 2 drugs.

"No one has an issue with that," he said. "The crime they are charged with here is merely having it in their blood stream.

"You'd think that because the act protects medical use, which includes ingestion, one would be protected against a law that makes it unlawful to have it in your system."

Komorn said Section 7 of the Michigan Medical Marihuana Act says that any law that is in conflict should be trumped by it. He argued that the fact that the act allows the marijuana use for medical purposes shows that it has pharmaceutical use, and shouldn't be considered a Schedule 1 narcotic.

Under the current state of the law under *Koon*, Komorn said he advises his clients that they shouldn't show their medical marijuana card if pulled over.

"Whatever value you think your card has, it's worse now," he said. "If you're driving and you get pulled over and the police officer sees your card, he may want to draw blood. Patients who medicate regularly are probably always going to have an active ingredient of THC in their body."

Komorn said he's learned through trying medical marijuana cases that THC levels are highest during the first 15 to 20 minutes after smoking, before dropping off to much lower, non-impairing levels, at which they stay for around 12 hours.

"They get the benefit of having it in their system," he said, "but don't have psychotropic effects."

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Decision in a Nutshell

The Case: *People v. Koon* (Lawyers Weekly No. 07-78220, 5 pages).

The Facts: Defendant was arrested for driving under the influence of a Schedule 1 narcotic (marijuana). He was a registered user of medical marijuana at the time of the arrest.

The Decision: The legality of the driver's marijuana use doesn't affect whether he can be charged with driving under the influence of a Schedule 1 narcotic.

From the Decision: "But there is a reasonable construction: the Legislature has determined that it is illegal to operate a motor vehicle with any amount of marijuana in the driver's system. Moreover, this is not in conflict with the MMMA [Michigan Medical Marijuana Act]. Not only does the MMMA not extend its protections of the medical use of marijuana to operating a motor vehicle while under the influence of marijuana, but it also recognizes other circumstances in which the medical use of marijuana is not permitted by the MMMA. For example, any medical use of marijuana is not permitted on a school bus, nor does it permit smoking marijuana, even for medical use, on public transportation."

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